IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20810 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAIYUM ASLAM SHAIKH (DETENU) THRO.FIREND SAIYED HAIDER L. - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 20/12/2005

ORAL JUDGMENT

1. Kaiyum Aslam Shaikh-detenu through his friend Saiyed Haider Lalubhai-petitioner has filed

this habeas corpus petition under Article 226 and 227 of the Constitution of India challenging order of detention dated 29.09.2005 passed by Police Commissioner, Surat city under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short 'PASA Act') which is illegal, null, void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 13.10.2005 and my learned brother Mr. Justice A.S. Dave issued RULE on 14.10.2005 which was made returnable after four weeks and that is why this matter has come up before this Court for hearing and final disposal.

2. Heard, Ms. Banna Dutta, learned Advocate appearing on behalf of Mr. A.R. Shaikh, learned Advocate for the petitioner and Mr. Pujari, learned A.G.P. in this behalf. Ms. Dutta, learned Advocate for the petitioner has invited my attention to the order of detention and committal order dated 29.09.2005 by which petitioner-detenu was arrested on 30.09.2005 and sent to District Jail, Nadiad.

3. Learned Advocate for the petitioner has further invited my attention to the grounds supplied in the order of detention. As the grounds of detention two criminal cases have been shown as registered against the petitioner detenu. First offence is registered as being C.R. No.12/04 at Athwa police station dated 21.01.2004 punishable under Section 379 of the Indian Penal Code. In that case it was alleged that detenu committed theft of old copper made utensils valued at Rs.1,150/-. Second offence is registered as being C.R. No.172/05 at Athwa police station dated 26.08.2005 punishable under Section 454, 380 and 114 of the I.P.C. In that case at was alleged that detenu committed theft of sixteen bunches of copper wire valued at Rs.27,162/-.

4. Learned Advocate for the petitioner further stated that in the order of detention it was stated that the petitioner-detenu is carrying on anti-social activities and on the basis of two offences registered against the petitioner-detenu he was

termed as 'Dangerous Person' within the meaning of Section 2(c) of the PASA Act. It was also stated that as said anti-social activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed.

5. Learned Advocate for the petitioner has further stated that on the basis of two criminal cases registered against the petitioner-detenu, he cannot be termed as 'Dangerous Person'. In support of this learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491. Learned Advocate for the petitioner has also placed reliance on Division Bench judgment of this Court in L.P.A. No.1139 of 1999 (Coram: Acting C.J., C.K. Thakkar & K.M. Mehta, J.) decided on 04.10.1999 in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2000 (1) GLH 393. He has also placed reliance on the

judgment of this Court (Coram: H.K. Rathod, J.)in the case of Naresh alias Lalo Babubhai Vs. State of Gujarat and Others reported in 2002(1) GLH 528.

6. Heard, Mr. Pujari, learned A.G.P. for respondent-detaining authority and he has filed affidavit-in-reply of one Mr. Sudhir Sinha, Police Commissioner in this behalf and he has tried to defend the order of detention as well as grounds stated therein.

7. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is two criminal cases registered against the detenu and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'.

8. I have heard learned Counsels for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the

order of detention without there being any credible or cogent material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also judgment of the apex Court in the case of Piyush Kantilal Mehta(Supra) and also Division Bench judgment of this Court in the case of Ashokbhai Jivraj(Supra) and another judgment of this Court in the case of Naresh alias Lalo Babubhai(Supra). In view of the facts and circumstances of the present case and also ratio laid down in the cases mentioned above, the order of detention cannot be sustained and deserves to be quashed and set aside.

9. In the result, this petition is allowed and order of detention dated 29.09.2005 passed by Police Commissioner, Surat city is hereby quashed and set aside. Kaiyum Aslam Shaikh-detenu is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule is made absolute to the aforesaid

extent with no order as to costs. Direct service is permitted.

(K.M.MEHTA,J.)

Umesh/-